HARRIS, WILTSHIRE & GRANNIS LLP

1200 EIGHTEENTH STREET, NW
WASHINGTON, DC 20036

TEL 202.730.1300 FAX 202.730.1301
WWW.HARRISWILTSHIRE.COM

ATTORNEYS AT LAW

5 October 2006

Ex Parte

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area,* WC Docket No. 05-281.

Dear Ms. Dortch:

On August 30, 2006, Tina Pidgeon of General Communication, Inc. ("GCI"), John Nakahata and Brita Strandberg of this firm, and undersigned counsel met with Renee Crittendon, Jeremy Miller, Denise Coca, Pam Megna, and Tim Stelzig of the Wireline Competition Bureau, Competition Policy Division. In that meeting, GCI discussed points that have been summarized in previous pleadings and *ex parte* filings in this proceeding.

In addition, GCI highlighted the following:

1. **The Anchorage markets present a unique situation, different from Omaha, and likely different from any other place in the lower 48.**

   - In Anchorage, there are only two competitors operating their own local switches – GCI and ACS. GCI is clearly ACS's principal (and only significant) competitor in any of the Anchorage markets.

   - The *Omaha Forbearance Order* explicitly refused to reach the situation where "the incumbent LEC's primary competitor uses unbundled networks [sic] elements (UNEs), particularly unbundled loops, as the primary vehicle for serving and acquiring customers in the relevant market."[1]

2. The wire centers that ACS defines in its Anchorage NECA tariff listings are the appropriate geographic markets for this proceeding.

- The Commission should not allow an ILEC to game the system by disavowing its own wire center designations to obscure differences in the competitive alternatives in those wire centers for strategic gain.

- All the wire centers that ACS has listed in NECA Tariff No. 4 meet the FCC's definition of a wire center in 47 C.F.R. § 51.5. ACS's attempt to argue that "wire centers" are limited to "stand-alone" switches has no support in the FCC's rules.[2]

- In any event, even if the definition of "wire center" could cover both the NECA Tariff wire centers and ACS's attempt to use a more limited definition of wire centers, strong policy reasons support use of the NECA Tariff No. 4 wire centers. Wire centers serve as appropriate boundaries for administrative convenience, but inevitably distort competitive reality to some degree. Thus, given the choice among different interpretations of the definitions of wire centers, the Commission should use the set of wire centers that best fits its analytical purpose. In this case, where the Commission is assessing whether consumers in a given area enjoy the benefit of true facilities-based competition, the Commission should rely on wire centers that capture differences in levels of competition, *i.e.*, where the competitive conditions are most homogeneous.

- Competitive conditions in ACS's NECA tariff wire centers are more homogenous than in its aggregated wire centers proposed in this proceeding. ACS's NECA tariff wire centers thus present the more accurate picture of the availability of competitive alternatives in each wire center. By contrast, ACS's definitions based on network architecture bear no rational connection to the forbearance analysis and are easily manipulated.

---

[1] *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order ¶ 2 n.4, WC Docket No. 04-223 (rel. Dec. 2, 3005). *See also id.* ¶ 64 n. 167 ("[W]e find that Cox has been successfully providing local exchange and exchange access services in these wire center service areas *without relying on Qwest's loops* or transport.") (emphasis added).

[2] *Ex Parte Submission of ACS of Anchorage, Inc., Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area*, WC Docket No. 05-281, at 8 (filed September 8, 2006)

3. The studies by Alan Mitchell and William Zarakas present a reliable and consistent picture of GCI's ability to serve customers over its own facilities in Anchorage.

- Mr. Mitchell approximated the extent to which GCI cable and fiber currently pass Anchorage customers, using conservative assumptions. Using plat maps and GCI internal information regarding the location of its cable and fiber plants, Mr. Mitchell (with the aid of a GIS specialist) was able to overlay the cable and fiber plant on the plat map. Because the plat maps show property line boundaries and not buildings, it was not possible to determine the distance to individual buildings. However, Mr. Mitchell was able to determine the distance from the GCI cable or fiber plant to the parcel boundary. Mr. Mitchell then classified the properties in Anchorage as either residential or business locations based on the plat map land zoning classification, except that he reclassified apartment buildings as residential (they are zoned as commercial).

- Mr. Mitchell used 80 feet as the distance threshold to the property line. That distance corresponds with the distance necessary to reach across all but the widest streets or highways. Mr. Mitchell used this distance because the existing rights of way generally run down one or the other side of a street, but do not permit GCI to cross over a property to reach a property behind it on another street. Doing so without proper rights of way would constitute trespass.

- For business locations, Mr. Mitchell divided between small and medium-to-large business locations based on building value. In doing so, Mr. Mitchell considered the size of the location, rather than the size of the business – so that a large mall, for instance, is considered a medium-to-large business and not several small businesses.

- GCI's relatively high residential coverage results correlate with its cable footprint and indicate that its method is accurate and not underinclusive.

- Moreover, in response to criticisms from ACS, Mr. Mitchell performed a sensitivity analysis of the building value cutoff between small and medium-to-large business locations. Doubling or halving the building value cutoff only increased or decreased the results by two percentage points.

- Mr. Mitchell's study also demonstrated that fiber is not ubiquitous for either medium-to-large business locations or for small business locations. GCI provided further evidence of its inability to serve most businesses over fiber, showing that even if fiber is an economically viable technology to provide service to small business locations – which it is not – including GCI's current fiber plant in Mr.

Mitchell's analysis of GCI's ability to serve small businesses increases reachable small businesses by only two percent.[3]

- Mr. Zarakas illustrated the extent to which it would be economically feasible for GCI to extend its current cable and fiber plant to serve Anchorage customers given unlimited time and resources, not on a short run basis. Mr. Zarakas's analysis notably showed that GCI's fiber network could serve on an economic feasibility basis only a small minority of medium-to-large business locations.

- Contrary to ACS's assertions, these declarations do not contradict each other, but rather are premised on different time horizons: Mr. Mitchell looks at the short term ability of GCI to upgrade its *current* plant to provide service, while Mr. Zarakas looks at the long term economic feasibility of *extending* that plant to provide service outside of GCI's current cable and fiber plant footprint. For simplicity and to be conservative, both of these declarations are premised on the assumption that the plant can technologically provide all services, which is not in fact the case, as GCI has demonstrated throughout this proceeding.

4. GCI and ACS agree that distinct product markets exist for residential and business customers in Anchorage, and, further, ACS's own expert acknowledges a product market difference between small businesses and medium-to-large businesses.

- ACS concedes that residential and business customers are in separate product markets. Kenneth Sprain acknowledges that "[u]nlike residential customers, business customers require different levels of capacity."[4]

- There is no support for ACS's contention that DS0 and DS1 services are fungible. Indeed, Howard Shelanski agrees that "the services to mass-market (residential and small-business) customers and services to enterprise (medium-and large-business) customers should constitute distinct product markets."[5] Thus, DS0 business and DS1 business services are in separate product markets.

---

3 See chart entitled "GCI Cable TV and Fiber Plant Coverage of Small Business Locations," attached hereto as Exhibit 1.

4 Statement of Kenneth L. Sprain ¶ 9 ("Sprain Decl."), attached as Exhibit A to *Reply Comments of ACS of Anchorage, Inc. In Support of Its Petition for Forbearance from Sections 251(c)(3) and 252(d)(1)*, WC Docket No. 05-281, (filed February 23, 2006) ("ACS Reply Comments").

5 Reply Statement of Howard A. Shelanski ¶ 3, attached as Exhibit G to ACS Reply Comments.

5. ACS concedes that it markets to business customers on a customer-specific basis.[6]

- Contrary to its claims in its first forbearance petition that business customers face uniform prices throughout Anchorage, ACS concedes in its second forbearance petition that it can and does reprice business contracts for "each customer," and therefore, with no obligation to provide GCI with UNE access, can could pricing flexibility to take advantage of GCI's inability to serve business customers over its own facilities.

6. ACS's own testimony on provisioning times for its business customers should set the outer limit of a commercially-reasonable period in which a customer can be served without UNEs.

- Mr. Sprain makes clear that ACS processes more than 90% of its business customer service orders in less than 30 days.[7] Residential customers are typically less flexible in the amount of time they will wait for service.

7. Transition is key to any forbearance the Commission may grant.

- The Commission should not grant and make effective any forbearance with regard to residential service premised on cable deployment that has not yet occurred when there is an active transition occurring from UNEs to cable facilities, such as in the Anchorage residential markets. At minimum, to be consistent with the *Omaha Forbearance Order*, the Commission should begin any residential transition to pricing forbearance (the maximum forbearance consistent with the *Omaha Forbearance Order*) at the time of GCI's projected completion of node upgrades.

- Transition is not yet possible in the business market or in the residential areas outside of GCI's cable footprint. As such, forbearance in these markets is not justified.

---

6 *See* Declaration of Mitchell Andrew Coon ¶ 3, attached as Exhibit F to *Petition of ACS of Anchorage, Inc. for Forbearance from Certain Dominant Carrier Regulation of its Interstate Access Services, and for Forbearance from Title II Regulation of its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area,* WC Docket No. 06-109 (filed May 22, 2006) ("ACS Dominant Carrier Forbearance Petition") ("[E]ach company must reprice its services when a customer under this type of contract receives a competitive offer."); Declaration of Mark Enzenberger ¶ 2, attached as Exhibit G to ACS Dominant Carrier Forbearance Petition ("GCI and ACS must earn each customer's business every day, repricing services in order to remain competitive.").

7 Sprain Decl. ¶ 9.

- ACS seeks disruption before GCI's transition can occur, failing to recognize that GCI is fulfilling the intent of the 1996 Act by voluntarily transitioning to its own facilities. ACS seeks to use the regulatory process to cause competitive harm, which is not the purpose of the Act or the forbearance process.

In accordance with FCC rules, a copy of this letter is being filed electronically in the above-referenced proceeding.

Sincerely yours,

Christopher P. Nierman
Counsel to General Communication, Inc.

cc: Denise Coca
Renee Crittendon
Pam Megna
Jeremy Miller
Tim Stelzig